No. 149.

Brf. of Atty. Gen.l (Richards) for Appellee (on mo

Filed Dec. 10, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE TIDE-WATER OIL COMPANY, appellant,
v.
THE UNITED STATES. } No. 149.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR AN ADDITIONAL FINDING.

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I.

It is too late for the appellant to shift its ground in this case. The claim filed by the appellant in the Court of Claims was based upon section 3019 of the Revised Statutes of the United States, which reads as follows:

> There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks, respectively.

A reference to the petition filed in the Court of Claims (Rec., p. 2, pars. 10, 11, 12, 13, and 14), and to the findings of fact made by the Court of Claims (Findings Nos. 5, 6, and 7, Rec., pp. 14, 15, 16, 17, and 18), and to the opinion of the Court of Claims (Rec., p. 18) makes it clear that, from the inception of the claim up to the present time, it was presented, prosecuted, discussed, considered, and rejected, under section 3019 of the Revised Statutes alone.

Now, the appellant desires to shift ground and put part of this claim under section 25 of the act of October 1, 1890 (26 Stat., 617), which reads as follows:

> That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation

therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

The court will observe that the provisions of this section with respect to drawback differ from those of section 3019, Revised Statutes. The precise differences, and their effect, with reference to the facts in this case, it is unnecessary to discuss. What the Court of Claims would have done if this claim, or part of it, had been presented under section 25 of the act of October 1, 1890, it is impossible to determine. The claim was presented and decided in view of the wording of section 3019, and this is the claim, a claim based on section 3019, which is before this court.

II.

If the Court of Claims did not consider and make a finding in the light of the provisions of section 25 of the act of October 1, 1890, it was the fault of the appellant. The appellant chose its position, and planted itself upon section 3019. It is difficult to understand how counsel for appellant can say, "The need of this finding was only recently discovered, when, upon reading the court's opinion, it was found to be based wholly upon Revised Statutes section 3019," when the appellant based its claim wholly upon section 3019, and the finding of the court was accordingly and necessarily restricted to the claim presented.

III.

By reading the findings of the Court of Claims (Rec., pp. 13 to 18) this court will note there is no finding of the precise amount due the appellant in the event the Court of Claims was wrong in its conclusion of law. This is because the ultimate and controlling fact found by the Court of Claims was " that the boxes or cases so exported *were not manufactured* in the United States." (Rec., top p. 18.) In the opinion of the court the conclusion is put in another form, the court stating that the shooks out of which the boxes or cases exported by the appellant were manufactured, *were not materials* that were in reality manufactured in the United States.

It was this finding of the court that disposed of the claim of the appellant, and in view of this finding it was unnecessary for the court to enter into any computation of the amount of drawback to which the appellant would have been entitled if its decision had been otherwise. Hence the court made no such computation. The proposed additional finding asked for by the appellant would be simply a partial computation of this character.

It is submitted that the motion should be denied.

JOHN K. RICHARDS,
Solicitor-General.

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